

Congress of the United States
House of Representatives

COMMITTEE ON OVERSIGHT AND ACCOUNTABILITY

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September 7, 2023

The Honorable Alexander Hoehn-Saric
Chairman
U.S. Consumer Product Safety Commission
4330 East-West Highway
Bethesda, MD 20814

Dear Chairman Hoehn-Saric,

The Committee on Oversight and Accountability is conducting oversight of the U.S. Consumer Product Safety Commission (CPSC) Supplemental Notice of Proposed Rulemaking for portable generators (hereinafter “the Rule”).¹ Specifically, CPSC has eliminated the existing exemption for the engine-driven portable welder.² The Rule would categorically move these *industrial* portable generators under regulation designed to strictly protect *consumers*.³ The Committee seeks information to understand CPSC’s rationale for regulating industrial products squarely outside of its jurisdiction, CPSC’s evaluation of stakeholder concerns, and CPSC’s inadequate health and cost analyses.

Engine-driven portable welders serve as welding machines and power sources for jobsites, proving vital in remote locations and harsh conditions for construction and agriculture workers.⁴ Under the Rule, CPSC would ban these machines and require “product redesign and redevelopment which will take years.”⁵ In 2016, CPSC concluded engine-driven portable welders “are not typically used by consumers.”⁶ But under the Rule, CPSC is reclassifying heavy work machines meant for “powering job-site tools” like welding equipment to be

¹ CPSC, *Safety Standard for Portable Generators, Supplemental Notice of Proposed Rulemaking*, 88 Fed. Reg. 24346 (Apr. 20, 2023).

² Naveem Athrappully, *Biden Administration Rule Would Ban Nearly All Portable Gas-Powered Generators*, EPOCH TIMES (July 20, 2023).

³ Nat’l Electrical Manufacturers Assoc., *Comments on CPSC-2006-0057 – Safety Standard for Portable Generators, Supplemental Notice of Proposed Rulemaking* (Jun. 20, 2023).

⁴ Prescient & Strategic Intelligence Market Research, *U.S. Engine-Driven Welder Market Report: By Fuel Type (Gasoline, Diesel), Amperage (Less than 200 A, 200 A–299 A, 300 A–399 A, 400 A–499 A, 500 A–599 A, 600 A–799 A, 800 A and Above), Application (Construction, Pipeline, Mining) –Industry Size and Growth Forecast to 2030* (May 2022).

⁵ *Supra*, n. 3, at 2.

⁶ *See* 81 Fed. Reg. 83556 (Nov. 21, 2016).

consistent with conventional portable generators used by consumers in residential and non-work-related settings.⁷

The Rule's impact on industrial products exceeds CPSC's mission to focus strictly on consumer products.⁸ Even for consumers, CPSC has increasingly overstepped its authority by advancing policies restricting consumer choice.⁹ Under the Biden Administration, products using gas, diesel, or propane—like engine-driven portable welders and gas stoves—have faced unprecedented scrutiny over health concerns without adequate analysis on behalf of rulemaking authorities.¹⁰ The Rule lacks analysis demonstrating significant harm from carbon monoxide (CO) poisoning from engine-driven portable generators, raising concerns CPSC is simply citing incidents and then regulating without meeting statutory requirements.¹¹ Manufacturers and workers deserve to know the underpinnings of government overreach which will raise their costs, lower their productivity, and lessen the quality of their work.

CPSC appears to have surpassed Consumer Product Safety Act (CPSA) authority in advancing the Rule.¹² The Environmental Protection Agency (EPA) even notified CPSC in 2017 that CPSC lacks authority to regulate portable generators emissions under CPSA.¹³ The Committee also has concerns that the final regulatory analysis under 15 U.S.C. § 2058(f) will fail to recognize the Rule's impact on manufacturing costs because no compliant engine-driven portable generators currently exist.¹⁴

To assist the Committee in understanding CPSC's consideration of jurisdiction, costs, and safety risks in the Rule, please provide the following documents and information no later than September 21, 2023:

1. All documents and communications referring or relating to the April 20, 2023, Portable Generators Safety Standards Rule, including but not limited to jurisdiction, cost, and safety analyses;
2. All documents and communications submitted to the CPSC Consumer Hotline referring or relating to engine-driven portable welders;

⁷ *Supra*, n. 3, at 3.

⁸ CPSC, *Regulations, Laws & Standards* (last visited July 28, 2023).

⁹ Greg Wehner, *Gas stove ban 'on the table' for federal agency: reports*, FOX BUSINESS (Jan. 9, 2023).

¹⁰ See LI ET AL., GAS COOKING AND RESPIRATORY OUTCOMES IN CHILDREN: A SYSTEMATIC REVIEW, GLOBAL EPIDEMIOLOGY (2023).

¹¹ *Supra*, n. 3, at 11.

¹² 15 U.S.C. §§ 2051–2089.

¹³ Portable Generator Manufacturers' Assoc., *Docket No. CPSC–2006–0057 – Comments on Supplemental Notice of Proposed Rulemaking for a Safety Standard for Portable Generators* (June 20, 2023); See also Letter from E. Scott Pruitt, Administrator, EPA, to Ann Marie Buerkle, Acting Chairman, CPSC (May 10, 2017).

¹⁴ *Supra*, n. 3, at 13.

3. All documents and communications submitted to SaferProducts.Gov referring or relating to engine-driven portable welders;
4. All documents and communications submitted to the National Electronic Injury Surveillance System referring or relating to engine-driven portable welders;
5. All documents and communications submitted to the Civil and Criminal Penalties Database referring or relating to engine-driven portable welders;
6. All documents and communications in the CPSC Office of Compliance referring or relating to engine-driven portable welders; and
7. All documents and communications referring or relating to recalls of engine-driven portable welders.
8. All documents and communications between and among CPSC and EPA from May 10, 2017, to present evaluating “current emission standards for portable generators,” and determining “whether it would be appropriate for the EPA to use its authority under section 213 of the [Clean Air Act] to modify them in order to address the risk that CPSC has identified.”¹⁵

Additionally, please provide a staff-level briefing on this matter as soon as possible, but no later than September 14, 2023. Attached are instructions for producing the documents and information to the Committee. If you have any questions, please contact the Committee on Oversight and Accountability Majority staff at 202-225-5074.

The Committee on Oversight and Accountability is the principal oversight committee of the U.S. House of Representatives and has broad authority to investigate, “any matter” at “any time” under House Rule X. Thank you for your attention to this important matter.

Sincerely,



James Comer
Chairman
Committee on Oversight and Accountability



Pat Fallon
Chairman
Subcommittee on Economic Growth,
Energy Policy, and Regulatory
Affairs

¹⁵ Letter from E. Scott Pruitt, Administrator, EPA, to Ann Marie Buerkle, Acting Chairman, CPSC (May 10, 2017).

The Honorable Alexander Hoehn-Saric

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cc: The Honorable Jamie Raskin, Ranking Member
Committee on Oversight and Accountability

The Honorable Cori Bush, Ranking Member
Subcommittee on Economic Growth, Energy Policy, and Regulatory Affairs